

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a).

## **FACTUAL HISTORY**

On July 28, 2003 appellant, then a 51-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral multiple crush syndrome, bilateral carpal tunnel syndrome, osteoarthritis, and exostoses of the right and left third metacarpal due to factors of her federal employment. She noted that she first became aware of her conditions on June 4, 2002 and realized their relationship to her federal employment on June 4, 2003. Appellant stopped work on March 11, 2002.

On August 4, 2004 OWCP accepted the claim for aggravation of bilateral carpal tunnel syndrome and aggravation of bilateral osteoarthritis of the hands. It paid appellant wage-loss compensation on the daily rolls from June 4, 2002 through October 30, 2004 and then on the periodic rolls commencing October 31, 2004.

Appellant underwent OWCP-authorized left carpal tunnel release, flexor tenosynovectomy, and basal joint first carpometacarpal arthroplasty on February 28, 2006.

On September 1, 2016 OWCP referred appellant, a statement of accepted facts (SOAF), and a list of questions to Dr. Ludwig Licciardi, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine whether appellant had any continuing disability arising from the accepted employment injuries. In a September 28, 2016 report, Dr. Licciardi provided physical examination findings and diagnosed bilateral osteoarthritis of the hands and bilateral carpal tunnel syndrome. He noted that appellant's conditions were aggravated by her employment activities and were permanent. Dr. Licciardi opined that appellant could perform sedentary or light-duty work for four hours per day with permanent restrictions. He found that appellant had not yet reached maximum medical improvement (MMI) and that her conditions were permanent and progressive.

In a July 6, 2017 report, Dr. Seymour L. Edelstein, a Board-certified orthopedic surgeon, examined appellant and diagnosed bilateral carpal tunnel syndrome, flexor tendinitis and triggering of the left second digit, and rupture of the ulnar sagittal band of the left fourth digit. He opined that appellant was not capable of working and had severe loss of sensation bilaterally. Dr. Edelstein noted that appellant's conditions were aggravated by her employment activities and found that she was totally disabled from her position as a letter carrier.

On August 21, 2017 OWCP determined that a conflict of medical opinion existed between the treating physician, Dr. Edelstein, who indicated that appellant remained totally disabled from work due to the accepted conditions, and the second opinion physician, Dr. Licciardi, who advised that appellant could return to light-duty work with restrictions.

On August 24, 2017 OWCP referred appellant, along with a SOAF and the case record, for an impartial medical examination with Dr. Alan Crystal, a Board-certified orthopedic surgeon, to

resolve the conflict of medical opinion regarding appellant's continuing employment-related residuals and disability.

In a September 13, 2017 report, Dr. Crystal noted appellant's history of injury and medical treatment. He conducted a physical examination and opined that appellant's aggravation of bilateral carpal tunnel syndrome was temporary and had resolved. He found that appellant could work in a limited/light-duty position as a modified letter carrier. Dr. Crystal opined that appellant had reached MMI.

In addendum reports dated May 29 through December 3, 2018, Dr. Crystal clarified that appellant's accepted employment injuries had resolved. He opined that appellant could only work four hours per day in a light-duty position because of her preexisting osteoarthritis of her hands. Dr. Crystal further opined that appellant would suffer from aggravation of osteoarthritis if she returned to full-duty work.

On January 17, 2019 OWCP advised appellant that it proposed to terminate her entitlement to wage-loss compensation and medical benefits based on Dr. Crystal's opinion that the accepted conditions had ceased without residuals or disability. It afforded her 30 days to submit additional evidence or argument challenging the proposed termination.

In a letter dated February 12, 2019, counsel argued that Dr. Crystal's December 3, 2018 addendum report established that appellant was only capable of working four hours per day in a light-duty position. He resubmitted a July 6, 2017 report from Dr. Edelstein and asserted that it confirmed appellant's continuing employment-related disability.

By decision dated February 27, 2019, OWCP terminated appellant's wage-loss compensation and medical benefits, effective February 28, 2019, based on the special weight accorded to Dr. Crystal as the IME.

OWCP subsequently received a January 31, 2019 report from Dr. Edelstein, who noted that appellant had severe loss of sensation and arthritis in her hands. Dr. Edelstein examined appellant and provided physical findings.

On July 12, 2019 appellant, through counsel, requested reconsideration. Counsel asserted that Drs. Crystal, Licciardi, and Edelstein all found that appellant had a continuing employment-related disability.

In a May 16, 2019 report, Dr. Edelstein noted that appellant was originally seen on June 4, 2002 and noted that she had developed swelling of the left third digit as a result of a fall of approximately one year prior. He provided physical examination findings and diagnosed bilateral carpal tunnel syndrome, flexor tendinitis and triggering of the left second digit, and rupture of the ulnar sagittal band of the left fourth digit. Dr. Crystal again opined that appellant was totally disabled from her position as a letter carrier.

By decision dated October 3, 2019, OWCP denied modification of the February 27, 2019 decision.

On April 29, 2020 appellant, through counsel, requested reconsideration. Counsel resubmitted a May 16, 2019 report from Dr. Edelstein with a correction stating that appellant never fell at work. He again asserted that the medical evidence of record established that OWCP failed to meet its burden of proof to justify termination of appellant's compensation and medical benefits.

By decision dated May 8, 2020, OWCP denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

### **LEGAL PRECEDENT**

Section 8128 (a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation, at any time, on his or her own motion or on application.<sup>3</sup>

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.<sup>4</sup>

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.<sup>5</sup> If it chooses to grant reconsideration, it reopens and reviews the case on its merits.<sup>6</sup> If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.<sup>7</sup>

### **ANALYSIS**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

Appellant filed a timely request for reconsideration on April 29, 2020. In support of her request, counsel argued that the medical evidence of record established that appellant had a

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<sup>3</sup> 5 U.S.C. § 8128(a); *see J.T.*, Docket No. 19-1829 (issued August 21, 2020); *W.C.*, 59 ECAB 372 (2008).

<sup>4</sup> 20 C.F.R. § 10.606(b)(3); *see J.V.*, Docket No. 19-0990 (issued August 26, 2020); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

<sup>5</sup> *Id.* at § 10.607(a); *see M.M.*, Docket No. 20-0523 (issued August 25, 2020). The one-year period begins on the next day after the date of the original contested decision. For merit decisions issued on or after August 29, 2011, a request for reconsideration must be received by OWCP within one year of OWCP's decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the received date in the Integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

<sup>6</sup> *Id.* at § 10.608(a); *see M.M.*, Docket No. 20-0574 (issued August 19, 2020); *M.S.*, 59 ECAB 231 (2007).

<sup>7</sup> *Id.* at § 10.608(b); *see J.V.*, *supra* note 4; *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

continuing employment-related disability and that OWCP failed to meet its burden of proof to justify termination of her compensation and medical benefits. The Board finds that these arguments do not show that OWCP erroneously applied or interpreted a specific point of law, nor do they advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of her claim based on either the first or second above-noted requirements under 20 C.F.R. § 10.606(b)(3).<sup>8</sup>

Appellant also resubmitted a May 16, 2019 report from Dr. Edelstein with a correction stating that she never fell at work. While this correction is new, the report is substantially similar to the prior evidence of record. Providing additional medical evidence that either duplicates or is substantially similar to evidence of record does not constitute a basis for reopening a case.<sup>9</sup> As appellant did not provide relevant and pertinent new evidence, she is not entitled to a merit review based on the third requirement under 20 C.F.R. § 10.606(b)(3).<sup>10</sup>

The Board therefore finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.<sup>11</sup>

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

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<sup>8</sup> *Supra* note 4.

<sup>9</sup> *See B.S.*, Docket No. 20-0927 (issued January 29, 2021); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

<sup>10</sup> *S.H.*, Docket No. 19-1897 (issued April 21, 2020); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *Edward Matthew Diekemper*, 31 ECAB 224-25 (1979).

<sup>11</sup> *See C.M.*, Docket No. 19-1610 (issued October 27, 2020); *A.K.*, Docket No. 09-2032 (issued August 3, 2010); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006) (when a request for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b), OWCP will deny the request for reconsideration without reopening the case for a review on the merits).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 8, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 7, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board